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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CATHERINE BUI, an individual,
Plaintiff,

vs.

ERICA L. BRACHFELD, A
PROFESSIONAL CORPORATION, a
California professional corporation;
ERICA LYNN BRACHFELD, an
individual; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.: CV08-08297 SVW (FFMx)

**JOINT STIPULATION RE
DISCOVERY DISPUTE**

DATE: June 23, 2009

TIME: 10:00 am

COURTROOM: E (9th Floor Spring St.)

Discovery Cut-Off: None Set

Pretrial Conference: 7/20/09

Trial Date: 7/28/09

COMES NOW plaintiff CATHERINE BUI and defendants ERICA L.
BRACHFELD, a California professional corporation, and ERICA LYNN
BRACHFELD and, in accordance with Local Rule 37-2.1 and 27-2.1, submits their
Joint Stipulation, as follows:

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JOINT STIPULATION REGARDING DISCOVERY DISPUTE

I. FACTUAL BACKGROUND.

Plaintiff's complaint includes causes of action for violation of the Fair Debt Collection Practices Act ("FDCPA"), violations of California's Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), intentional infliction of emotional distress, unlawful business practices, and declaratory relief re: violations of the FDCPA and RFDCPA.

Defendant ERICA L. BRACHFELD is a California attorney; she and her professional corporation are debt collectors within the meaning of the FDCPA (Complaint, ¶6.) Plaintiff alleges numerous specific violations of the FDCPA (Complaint, ¶¶8-12), including the allegation that someone from Defendant's collection agency claimed to be calling from the attorney general's office, and insisted that if Plaintiff did not disclose her personal bank account information and authorize an immediate withdrawal, a lawsuit would be filed the next day. (Complaint, ¶¶11-12).

On March 25, 2009, Plaintiff propounded special interrogatories and requests for production, set one. True and correct copies are attached hereto as Exhibits "1" and "2," respectively.

At defendant's request, Plaintiff granted an extension of time to respond.

On or around May 1, 2009, the Defendants served responses to the special interrogatories as well as responses to the requests for production. True and correct copies are attached hereto as Exhibits "3" and "4," respectively.

On May 4, 2009, Plaintiff's counsel sent a meet and confer letter pursuant to Local Rule 37-1 addressing problems with the discovery responses, and setting a time and date for the pre-filing conference. A true and correct copy of the letter is attached hereto as Exhibit "5." At the request of defense counsel, the pre-filing conference was re-scheduled to Monday, May 18, 2009. The parties were able to resolve some of their disputes – at least tentatively. The items as to which no

1 compromise was achieved are addressed in this joint stipulation.

2
3 **II. REQUESTS FOR PRODUCTION OF DOCUMENTS AND RESPONSES**
4 **THERE TO.**

5 DOCUMENT REQUEST NO. 3:

6 YOUR employee handbook.

7 RESPONSE TO REQUEST NO. 3:

8 Defendant objects to the request on the grounds it is vague and ambiguous as
9 to the term, "YOU." Defendant further objects to the interrogatory on the grounds it
10 is overly broad, unduly burdensome, calls for proprietary and confidential
11 information and calls for information which is not relevant and not reasonably
12 calculated to lead to the discovery of admissible evidence concerning Plaintiff's
13 claims and Defendant's defendants thereto.

14 Subject to and without waiving said objections, Defendant responds as
15 follows: Once an appropriate protective order is entered, Defendant will produce
16 relevant portions of Erica L. Brachfeld, APC's policies and procedures that concern
17 Plaintiff's claims.

18 PLAINTIFF'S ARGUMENT FOR FURTHER RESPONSE:

19 As with most of her responses, Defendant's response to request number 3
20 includes various nuisance objections, such as "vague and ambiguous as to the term,
21 'YOU,'" and "calls for information which is not relevant and not reasonably
22 calculated to lead to the discovery of admissible evidence concerning Plaintiff's
23 claims and Defendant's defendants [sic] thereto."

24 These are nuisance objections because "YOU" is clearly defined within the
25 text of request number 1: "'YOU' shall refer to Erica L. Brachfeld, individually, and
26 any debt collection company owned in full or in part by Erica L. Brachfeld which
27 attempted to collect any debt from Plaintiff herein during the past three years." The
28 context adds additional clarity.

1 The notion that the request is “not relevant,” etc., is equally specious.
2 Defendant has raised the bona fide error defense of 15 U.S.C. §1692k(c) as her
3 seventh affirmative defense. That section provides: “A debt collector may not be
4 held liable in any action brought under this subchapter if the debt collector shows by
5 a preponderance of evidence that the violation was not intentional and resulted from
6 a bona fide error notwithstanding the maintenance of procedures reasonably adapted
7 to avoid any such error.” In other words, Defendant has claimed that she has
8 implemented and maintained procedures designed to avoid violations of the FDCPA
9 and the RFDCPA. Plaintiff’s discovery is aimed at seeing what those procedures
10 were.

11 Further, case law is clear that “In assessing damages, a court must consider the
12 frequency and persistence of noncompliance by the debt collector, the nature of such
13 noncompliance, and the extent to which such noncompliance was intentional.”
14 *Masuda v. Thomas Richards & Co.*, 759 F. Supp. 1456, 1467 (C.D. Cal. 1991). An
15 electronic copy of *Owens v. Brachfeld*, 2008 U.S. Dist. LEXIS 63701 (N.D. Cal.
16 2008), which deals with the same defendant as the case at hand and which quotes
17 that passage of *Masuda*, was emailed to defense counsel on May 11, 2009, in an
18 effort to narrow the discovery issues.

19 Further, Plaintiff contends that the Defendant has adopted a conscious policy
20 of ignoring the FDCPA / RFDCPA since illegal collection methods generate more
21 revenue, while the occasional FDCPA / RFDCPA lawsuit can be inexpensively
22 resolved without cutting too deeply into the bottom line.

23 Therefore, the contents of the employee manual are reasonably calculated to
24 lead to the discovery of admissible evidence whether or not they direct employees of
25 the Defendant’s collection agency in FDCPA / RFDCPA compliance.

26 Defendant seeks to condition her compliance with this request upon the
27 execution and court-approval of “an appropriate protective order.”

28 At no time before serving her responses did Defendant propose or move for a

1 protective order. At no point did she seek a 7-3 conference regarding such a motion.
2 Nor did she – in her written responses to discovery – claim any specific basis for
3 seeking one.

4 The burden would be on the moving party to make a clear showing of a
5 particular and specific need for a protective order (*Blankenship v. Hearst Corp.*⁵¹⁹
6 F2d 418 (9th Cir. 1975)). Even if the moving party succeeds in showing good
7 cause, the court will still balance the interests in allowing discovery against the
8 relative burdens to the parties (*Wood v. McEwen* 644 F2d 797 (9th Cir. 1981)). As
9 stated in *Foltz v. State Farm Mut. Auto. Ins. Co.* (9th Cir. 2003) 331 F3d 1122, 1130,
10 “broad allegations of harm, unsubstantiated by specific examples or articulated
11 reasoning, do not satisfy the Rule 26(c) test.” Defendant’s apparent fear that the
12 inadequacy of her own policies, procedures, and training materials will be exposed
13 by complying with the requests for production is not a sufficient basis for obtaining a
14 protective order. No legitimate interest (e.g., personal privacy, privilege, etc.) is
15 jeopardized, and no specific injury results. The only potential “embarrassment”
16 would be that stemming from Defendant’s own failure to comply with the law.

17 When asked during the pre-filing conference whether Defendant’s employees
18 – the debt collectors – are asked to sign confidentiality agreements upon
19 commencement of their employment with Defendant, counsel acknowledged that she
20 did not know. If Defendant herself does not insist upon such agreements with her
21 own employees, then any argument that a protective order is appropriate is simply
22 not credible. Even if such agreements have consistently been required by
23 Defendant, there is still not an adequate basis for seeking a protective order.

24 Finally, as pointed out by one commentary, “A motion for protective order
25 ordinarily should be noticed at the earliest possible time and certainly before the
26 discovery procedure is set to occur.” (Schwarzer, et al., CAL. PRAC. GUIDE: FED.
27 CIV. PROC. BEFORE TRIAL (Rutter, 2009) ¶11:1162, citing *National Indep.*
28 *Theatre Exhibitors, Inc. v. Buena Vista Distrib. Co.* 748 F.2d 602, 609 (11th Cir.

1 1984).) Objecting to a request for production of documents is not a proper means of
2 obtaining a protective order.

3 **DEFENDANT'S RESPONSE:**

4 At issue is Erica L. Brachfeld APC's employee handbook. The request is not
5 limited in any way and is therefore overly broad as to be unduly burdensome. The
6 request is not limited to any time period to narrow and focus on relevant materials.
7 Further, the request is not limited to documents pertaining to Plaintiff's claims in this
8 particular case and therefore the request calls for documents which are not relevant
9 and not reasonably calculated to lead to the discovery of admissible evidence in this
10 case. Finally the request calls for documents which Erica L. Brachfeld, APC
11 maintains are confidential and proprietary in nature.

12 **Defendant Agrees to Produce Confidential and Proprietary**

13 **Information Subject to a Protective Order**

14 While most courts recognize a presumption of public access to court records,
15 every court has inherent, supervisory power over its own records and files. Thus,
16 public access may be denied. Hagestad v. Tragesser (9th Cir. 1995) 49 F.3d 1430,
17 1433-43. A court will order documents sealed where good cause is shown that
18 outweighs the public's interest in the documents. Specifically, courts may issue
19 protective orders limiting disclosure of proprietary information or "other confidential
20 research, development or commercial information." FRCP 26(c)(7). Court may
21 grant a protective order restricting the use of any discovery to the present lawsuit.
22 Such relief is particularly justified if "federal action had been brought chiefly for the
23 purpose of exploiting liberal discovery devices available in federal civil actions.
24 Dove v. Atlantic Capital Corp. (2nd Cir. 1992) 963 F.2d 15, 19.

25 Defendant has no objections to producing Erica L. Brachfeld, APC's employee
26 handbook so long as the information is *relevant* to Plaintiff's claims and Defendant's
27 defenses in this particular case. However, Defendant has agreed to produce this
28 document so long as protective order is in place because the document Plaintiff seeks

1 contain confidential information relating to training and development, technology or
2 other proprietary information belonging to Erica L. Brachfeld, APC. Erica L
3 Brachfeld, APC considers its employee handbook, training materials and policies
4 and procedures regarding compliance with the FDCPA and CA Rosenthal Act as
5 confidential and proprietary in nature. The documents Plaintiff seeks were
6 developed by Erica L. Brachfeld, APC at a significant expense in time, effort and
7 money. Erica L. Brachfeld would be competitively disadvantaged if one of its
8 competitors could obtain the requested documents developed and refined by Erica L.
9 Brachfeld, APC. In this regard, Erica L Brachfeld, APC takes measures to ensure the
10 information is kept confidential by requiring each of its employees to sign a
11 confidentiality agreement. See Declaration of Martin Brachfeld.

12 Plaintiff and Defendant have met and conferred on this discovery issue.
13 Despite their good faith efforts, it became apparent that the Parties would not be able
14 to informally resolve their discovery dispute without this Court's intervention. As
15 such, Defendant advised Plaintiff that Defendants would proceed with a Motion for
16 Protective Order.

17 **Plaintiff's Request is Overly Broad and Calls for Irrelevant Documents**

18 Plaintiff's request is also overly broad in that it calls for documents which are
19 not relevant. Plaintiff demands that Defendant produce Erica L. Brachfeld, APC's
20 employee handbook *regardless of whether the information pertains to Plaintiff's*
21 *claims in this particular case.* In this lawsuit, Plaintiff alleges Defendant failed to
22 provide verification notice, third party disclosure, made repeated phone calls to
23 Plaintiff's family, contact with Plaintiff after Defendant was notified Plaintiff was
24 represented by counsel, false representations, unconscionable means to collect a
25 debt, threatening legal action that was not intended, failure to make required
26 disclosures, and attempting to collect an amount not expressly authorized by
27 agreement or law.

28 A reasonable interpretation of the request for Erica L. Brachfeld, APC's

1 employee handbook calls for Erica L. Brachfeld, APC to disclose information that
2 does not pertain to debt collection activities. In essence, Plaintiff wants to know
3 every single detail of Erica L. Brachfeld, APC's employee handbook even if the
4 information does not pertain to any Plaintiff's claims in this case. Plaintiff is not
5 entitled to overly broad and unreasonable discovery on the chance that Plaintiff may
6 somehow relate it to an issue in this case. Further, Plaintiff must not be allowed to
7 conduct a "fishing expedition" into Erica L. Brachfeld, APC's policies and
8 procedures. Defendant should only be required to produce that which is relevant to
9 Plaintiff's specific claims in this particular case.

10 DOCUMENT REQUEST NO. 4:

11 Any and all printed materials -- including but not limited to training manuals --
12 which YOU have used in the past three years in training YOUR employees.

13 RESPONSE TO REQUEST NO. 4:

14 Defendant objects to the request on the grounds it is vague and ambiguous as
15 to the term, "YOU." Defendant further objects to the interrogatory on the grounds it
16 is overly broad, unduly burdensome, calls for proprietary and confidential
17 information and calls for information which is not relevant and not reasonably
18 calculated to lead to the discovery of admissible evidence concerning Plaintiff's
19 claims and Defendant's defendants thereto.

20 Subject to and without waiving said objections, Defendant responds as
21 follows: Once an appropriate protective order is entered, Defendant will produce
22 relevant portions of Erica L. Brachfeld, APC's policies and procedures that concern
23 Plaintiff's claims.

24 PLAINTIFF'S ARGUMENT FOR FURTHER RESPONSE:

25 Requests 3 and 4 are quite similar in terms of the nature of the materials
26 sought, and the responses provided by Defendant were identical. For the sake of
27 brevity, the foregoing arguments for further response will not be repeated.

28 It should be pointed out that in response to interrogatory number 6, Defendant

1 identified three employees who had some role in collection on Plaintiff's account.
2 Two of those employees are still with Defendant's company. Since those employees
3 may have had a role in the violations of the FDCPA / RFDCPA, and were acting
4 within the scope of their employment with Defendant, Defendant's training
5 procedures, policies, and materials are directly relevant to Plaintiff's claims.

6 Further, it should be pointed out that authority from other districts supports
7 this sort of discovery in FDCPA cases. See, for example, *Hastings v. Asset*
8 *Acceptance, LLC*, 2007 U.S. Dist. LEXIS 9206 (S.D. Ohio Feb. 6, 2007), and
9 *Boutvis v. Risk Mgmt. Alternatives, Inc.*, 2002 U.S. Dist. LEXIS 8521 (D. Conn. May
10 3, 2002).

11 **DEFENDANT'S RESPONSE:**

12 At issue are Erica L. Brachfeld APC's training materials and policies and
13 procedures regarding compliance with the FDCPA and CA Rosenthal Act. The
14 request is not limited in any way and is therefore overly broad as to be unduly
15 burdensome. Further, the request is not limited to documents pertaining to Plaintiff's
16 claims in this particular case and therefore the request calls for documents which are
17 not relevant and not reasonably calculated to lead to the discovery of admissible
18 evidence in this case. Finally the request calls for documents which Erica L.
19 Brachfeld, APC maintains are confidential and proprietary in nature.

20 **Defendant Agrees to Produce Confidential and Proprietary**
21 **Information Subject to a Protective Order**

22 While most courts recognize a presumption of public access to court records,
23 every court has inherent, supervisory power over its own records and files. Thus,
24 public access may be denied. *Hagestad v. Tragesser* (9th Cir. 1995) 49 F.3d 1430,
25 1433-43. A court will order documents sealed where good cause is shown that
26 outweighs the public's interest in the documents. Specifically, courts may issue
27 protective orders limiting disclosure of proprietary information or "other confidential
28 research, development or commercial information." FRCP 26(c)(7). Court may

1 grant a protective order restricting the use of any discovery to the present lawsuit.
2 Such relief is particularly justified if “federal action had been brought chiefly for the
3 purpose of exploiting liberal discovery devices available in federal civil actions.

4 Dove v. Atlantic Capital Corp. (2nd Cir. 1992) 963 F.2d 15, 19.

5 Defendant has no objections to producing Erica L. Brachfeld, APC's training
6 materials and policies and procedures regarding compliance with FDCPA and CA
7 Rosenthal Act so long as the information is *relevant* to Plaintiff's claims and
8 Defendant's defenses in this particular case. However, Defendant has agreed to
9 produce these documents so long as protective order is in place because the
10 documents Plaintiff seeks contain confidential information relating to training and
11 development, technology or other proprietary information belonging to Erica L.
12 Brachfeld, APC. Erica L Brachfeld, APC considers its training materials and
13 policies and procedures regarding compliance with the FDCPA and CA Rosenthal
14 Act as confidential and proprietary in nature. The documents Plaintiff seeks were
15 developed by Erica L. Brachfeld, APC at a significant expense in time, effort and
16 money. Erica L. Brachfeld would be competitively disadvantaged if one of its
17 competitors could obtain the requested documents developed and refined by Erica L.
18 Brachfeld, APC. In this regard, Erica L Brachfeld, APC takes measures to ensure the
19 information is kept confidential by requiring each of its employees to sign a
20 confidentiality agreement. See Declaration of Martin Brachfeld.

21 Plaintiff and Defendant have met and conferred on this discovery issue.
22 Despite their good faith efforts, it became apparent that the Parties would not be able
23 to informally resolve their discovery dispute without this Court's intervention. As
24 such, Defendant advised Plaintiff that Defendants would proceed with a Motion for
25 Protective Order.

26 **Plaintiff's Request is Overly Broad and Calls for Irrelevant Documents**

27 Plaintiff's request is also overly broad in that it calls for documents which are
28 not relevant. Plaintiff demands that Defendant produce *all of* Erica L. Brachfeld,

1 APC's training materials and policies and procedures regarding compliance with
2 FDCPA and CA Rosenthal Act *regardless of whether the information pertains to*
3 *Plaintiff's claims in this particular case.* In this lawsuit, Plaintiff alleges Defendant
4 failed to provide verification notice, third party disclosure, made repeated phone
5 calls to Plaintiff's family, contact with Plaintiff after Defendant was notified Plaintiff
6 was represented by counsel, false representations, unconscionable means to collect a
7 debt, threatening legal action that was not intended, failure to make required
8 disclosures, and attempting to collect an amount not expressly authorized by
9 agreement or law.

10 A reasonable interpretation of the request for Erica L. Brachfeld, APC's
11 training materials calls for Erica L. Brachfeld, APC to disclose information that does
12 not pertain to debt collection activities. In essence, Plaintiff wants to know every
13 single detail of Erica L. Brachfeld, APC's training materials and policies and
14 procedures regarding compliance with FDCPA and CA Rosenthal Act even if the
15 information does not pertain to any Plaintiff's claims in this case. Plaintiff is not
16 entitled to overly broad and unreasonable discovery on the chance that Plaintiff may
17 somehow relate it to an issue in this case. Further, Plaintiff must not be allowed to
18 conduct a "fishing expedition" into Erica L. Brachfeld, APC's policies and
19 procedures. Defendant should only be required to produce that which is relevant to
20 Plaintiff's specific claims in this particular case.

21 DOCUMENT REQUEST NO. 5:

22 All DOCUMENTS -- including but not limited to pleadings and discovery -- relating
23 to or prepared in connection with any lawsuits YOUR company has defended in
24 which YOUR company was alleged to have violated the FDCPA.

25 RESPONSE TO REQUEST NO. 5:

26 Defendant objects to the request on the grounds it is vague and ambiguous,
27 including vague and ambiguous as to the term, "YOUR." Defendant further objects
28 to the interrogatory on the grounds that it is overly broad, unduly burdensome,

1 oppressive, and calls for information which is not relevant and not reasonably
2 calculated to lead to the discovery of admissible evidence concerning Plaintiff's
3 claims and Defendant's defenses.

4 PLAINTIFF'S ARGUMENT FOR FURTHER RESPONSE:

5 Request number 5 relates to other FDCPA litigation which Defendant was
6 involved in. Defendant's objects are that the request is "not relevant," etc., but as
7 indicated above, intentionality is a factor which courts consider in assessing damages
8 in FDCPA / RFDCPA cases. Plaintiff could use other FDCPA cases alleging
9 similar facts or violations to show intentionality, to undermine the 1692k(c) "bona
10 fide error" defense, and to show Federal Rule of Evidence 404(b) factors (that
11 subparagraph provides, in pertinent part, that evidence of other wrongs or acts may
12 be admissible to show "proof of motive, opportunity, intent, preparation, plan,
13 knowledge, identity, or absence of mistake or accident").

14 Finally, case law supports Plaintiff's right to this information. In *Trevino v.*
15 *ACB Am., Inc.*, 232 F.R.D. 612, 9 (N.D. Cal. 2006), the court stated, "While
16 plaintiffs' requests may be phrased too broadly, information relating to whether or
17 not defendants had claims filed against them, participated in litigation or arbitration,
18 or received demand letters from attorneys about the legality of this particular type of
19 collection effort under the FDCPA is relevant and must be disclosed."

20 Defendant did not object on the grounds that any of the documents requested
21 would be covered by confidentiality agreements.

22 DEFENDANT'S RESPONSE:

23 Plaintiff demands information of any lawsuits, claims or complaints against
24 Brachfeld, other than the case at hand. Plaintiff's discovery request is overly broad
25 and irrelevant to any of the factual allegations set forth in the Complaint. In essence,
26 Plaintiffs want to know about any action against Brachfeld regardless of whether it
27 was a meritorious claim. The request is impermissible vague, ambiguous and overly
28 broad. A reasonable interpretation of the request calls for Brachfeld to disclose

1 information regarding any kind of claim against Brachfeld, not just the claims
2 asserted by Plaintiff in this particular case. Further, other claims, lawsuits or
3 complaints are not relevant. What other claimants have alleged against Brachfeld in
4 unrelated matters have no bearing on Brachfeld's liability to Plaintiff.

5 DOCUMENT REQUEST NO. 6:

6 All DOCUMENTS reflecting, memorializing, summarizing, or describing YOUR
7 policies regarding compliance with the FDCPA.

8 RESPONSE TO REQUEST NO. 6:

9 Defendant objects to the request on the grounds it is vague and ambiguous as
10 to the term, "YOU." Defendant further objects to the interrogatory on the grounds it
11 is overly broad, unduly burdensome, calls for proprietary and confidential
12 information and calls for information which is not relevant and not reasonably
13 calculated to lead to the discovery of admissible evidence concerning Plaintiff's
14 claims and Defendant's defendants thereto.

15 Subject to and without waiving said objections, Defendant responds as
16 follows: Once an appropriate protective order is entered, Defendant will produce
17 relevant portions of Erica L. Brachfeld, APC's policies and procedures that concern
18 Plaintiff's claims.

19 PLAINTIFF'S ARGUMENT FOR FURTHER RESPONSE:

20 Requests 3 and 6 are quite similar in terms of the nature of the materials
21 sought, and the responses provided by Defendant were identical. For the sake of
22 brevity, the foregoing arguments for further response will not be repeated.

23 DEFENDANT'S RESPONSE:

24 At issue are Erica L. Brachfeld APC's training materials and policies and
25 procedures regarding compliance with the FDCPA and CA Rosenthal Act. The
26 request is not limited in any way and is therefore overly broad as to be unduly
27 burdensome. Further, the request is not limited to documents pertaining to Plaintiff's
28 claims in this particular case and therefore the request calls for documents which are

1 not relevant and not reasonably calculated to lead to the discovery of admissible
2 evidence in this case. Finally the request calls for documents which Erica L.
3 Brachfeld, APC maintains are confidential and proprietary in nature.

4 **Defendant Agrees to Produce Confidential and Proprietary**
5 **Information Subject to a Protective Order**

6 While most courts recognize a presumption of public access to court records,
7 every court has inherent, supervisory power over its own records and files. Thus,
8 public access may be denied. Hagestad v. Tragesser (9th Cir. 1995) 49 F.3d 1430,
9 1433-43. A court will order documents sealed where good cause is shown that
10 outweighs the public's interest in the documents. Specifically, courts may issue
11 protective orders limiting disclosure of proprietary information or "other confidential
12 research, development or commercial information." FRCP 26(c)(7). Court may
13 grant a protective order restricting the use of any discovery to the present lawsuit.
14 Such relief is particularly justified if "federal action had been brought chiefly for the
15 purpose of exploiting liberal discovery devices available in federal civil actions.
16 Dove v. Atlantic Capital Corp. (2nd Cir. 1992) 963 F.2d 15, 19.

17 Defendant has no objections to producing Erica L. Brachfeld, APC's training
18 materials and policies and procedures regarding compliance with FDCPA and CA
19 Rosenthal Act so long as the information is *relevant* to Plaintiff's claims and
20 Defendant's defenses in this particular case. However, Defendant has agreed to
21 produce these documents so long as protective order is in place because the
22 documents Plaintiff seeks contain confidential information relating to training and
23 development, technology or other proprietary information belonging to Erica L.
24 Brachfeld, APC. Erica L Brachfeld, APC considers its training materials and
25 policies and procedures regarding compliance with the FDCPA and CA Rosenthal
26 Act as confidential and proprietary in nature. The documents Plaintiff seeks were
27 developed by Erica L. Brachfeld, APC at a significant expense in time, effort and
28 money. Erica L. Brachfeld would be competitively disadvantaged if one of its

1 competitors could obtain the requested documents developed and refined by Erica L.
2 Brachfeld, APC. In this regard, Erica L Brachfeld, APC takes measures to ensure the
3 information is kept confidential by requiring each of its employees to sign a
4 confidentiality agreement. See Declaration of Martin Brachfeld.

5 Plaintiff and Defendant have met and conferred on this discovery issue.
6 Despite their good faith efforts, it became apparent that the Parties would not be able
7 to informally resolve their discovery dispute without this Court's intervention. As
8 such, Defendant advised Plaintiff that Defendants would proceed with a Motion for
9 Protective Order.

10 **Plaintiff's Request is Overly Broad and Calls for Irrelevant Documents**

11 Plaintiff's request is also overly broad in that it calls for documents which are
12 not relevant. Plaintiff demands that Defendant produce *all of* Erica L. Brachfeld,
13 APC's training materials and policies and procedures regarding compliance with
14 FDCPA and CA Rosenthal Act *regardless of whether the information pertains to*
15 *Plaintiff's claims in this particular case*. In this lawsuit, Plaintiff alleges Defendant
16 failed to provide verification notice, third party disclosure, made repeated phone
17 calls to Plaintiff's family, contact with Plaintiff after Defendant was notified Plaintiff
18 was represented by counsel, false representations, unconscionable means to collect a
19 debt, threatening legal action that was not intended, failure to make required
20 disclosures, and attempting to collect an amount not expressly authorized by
21 agreement or law.

22 A reasonable interpretation of the request for Erica L. Brachfeld, APC's
23 training materials calls for Erica L. Brachfeld, APC to disclose information that does
24 not pertain to debt collection activities. In essence, Plaintiff wants to know every
25 single detail of Erica L. Brachfeld, APC's training materials and policies and
26 procedures regarding compliance with FDCPA and CA Rosenthal Act even if the
27 information does not pertain to any Plaintiff's claims in this case. Plaintiff is not
28 entitled to overly broad and unreasonable discovery on the chance that Plaintiff may

1 somehow relate it to an issue in this case. Further, Plaintiff must not be allowed to
2 conduct a “fishing expedition” into Erica L. Brachfeld, APC’s policies and
3 procedures. Defendant should only be required to produce that which is relevant to
4 Plaintiff’s specific claims in this particular case.

5 DOCUMENT REQUEST NO. 7:

6 All DOCUMENTS reflecting, memorializing, summarizing, or describing YOUR
7 policies regarding compliance with California's Rosenthal Fair Debt Collection
8 Practices Act.

9 RESPONSE TO REQUEST NO. 7:

10 Defendant objects to the request on the grounds it is vague and ambiguous as
11 to the term, “YOU.” Defendant further objects to the interrogatory on the grounds it
12 is overly broad, unduly burdensome, calls for proprietary and confidential
13 information and calls for information which is not relevant and not reasonably
14 calculated to lead to the discovery of admissible evidence concerning Plaintiff’s
15 claims and Defendant’s defendants thereto.

16 Subject to and without waiving said objections, Defendant responds as
17 follows: Once an appropriate protective order is entered, Defendant will produce
18 relevant portions of Erica L. Brachfeld, APC’s policies and procedures that concern
19 Plaintiff’s claims.

20 PLAINTIFF’S ARGUMENT FOR FURTHER RESPONSE:

21 Requests 6 and 7 are almost identical; 7 specifically focuses on the FRDCPA,
22 while 6 focuses on the FDCPA. Plaintiff’s complaint does allege separate violations
23 of both. See paragraphs 13-16 (FDCPA), and 17-21 (RFDCPA). For the sake of
24 brevity, the foregoing arguments for further response will not be repeated.

25 DEFENDANT’S RESPONSE:

26 At issue are Erica L. Brachfeld APC’s training materials and policies and
27 procedures regarding compliance with the FDCPA and CA Rosenthal Act. The
28 request is not limited in any way and is therefore overly broad as to be unduly

1 burdensome. Further, the request is not limited to documents pertaining to Plaintiff's
2 claims in this particular case and therefore the request calls for documents which are
3 not relevant and not reasonably calculated to lead to the discovery of admissible
4 evidence in this case. Finally the request calls for documents which Erica L.
5 Brachfeld, APC maintains are confidential and proprietary in nature.

6 **Defendant Agrees to Produce Confidential and Proprietary**
7 **Information Subject to a Protective Order**

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9 every court has inherent, supervisory power over its own records and files. Thus,
10 public access may be denied. Hagestad v. Tragesser (9th Cir. 1995) 49 F.3d 1430,
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12 outweighs the public's interest in the documents. Specifically, courts may issue
13 protective orders limiting disclosure of proprietary information or "other confidential
14 research, development or commercial information." FRCP 26(c)(7). Court may
15 grant a protective order restricting the use of any discovery to the present lawsuit.
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17 purpose of exploiting liberal discovery devices available in federal civil actions.
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19 Defendant has no objections to producing Erica L. Brachfeld, APC's training
20 materials and policies and procedures regarding compliance with FDCPA and CA
21 Rosenthal Act so long as the information is *relevant* to Plaintiff's claims and
22 Defendant's defenses in this particular case. However, Defendant has agreed to
23 produce these documents so long as protective order is in place because the
24 documents Plaintiff seeks contain confidential information relating to training and
25 development, technology or other proprietary information belonging to Erica L.
26 Brachfeld, APC. Erica L Brachfeld, APC considers its training materials and
27 policies and procedures regarding compliance with the FDCPA and CA Rosenthal
28 Act as confidential and proprietary in nature. The documents Plaintiff seeks were

1 developed by Erica L. Brachfeld, APC at a significant expense in time, effort and
2 money. Erica L. Brachfeld would be competitively disadvantaged if one of its
3 competitors could obtain the requested documents developed and refined by Erica L.
4 Brachfeld, APC. In this regard, Erica L Brachfeld, APC takes measures to ensure the
5 information is kept confidential by requiring each of its employees to sign a
6 confidentiality agreement. See Declaration of Martin Brachfeld.

7 Plaintiff and Defendant have met and conferred on this discovery issue.
8 Despite their good faith efforts, it became apparent that the Parties would not be able
9 to informally resolve their discovery dispute without this Court's intervention. As
10 such, Defendant advised Plaintiff that Defendants would proceed with a Motion for
11 Protective Order.

12 **Plaintiff's Request is Overly Broad and Calls for Irrelevant Documents**

13 Plaintiff's request is also overly broad in that it calls for documents which are
14 not relevant. Plaintiff demands that Defendant produce *all of* Erica L. Brachfeld,
15 APC's training materials and policies and procedures regarding compliance with
16 FDCPA and CA Rosenthal Act *regardless of whether the information pertains to*
17 *Plaintiff's claims in this particular case*. In this lawsuit, Plaintiff alleges Defendant
18 failed to provide verification notice, third party disclosure, made repeated phone
19 calls to Plaintiff's family, contact with Plaintiff after Defendant was notified Plaintiff
20 was represented by counsel, false representations, unconscionable means to collect a
21 debt, threatening legal action that was not intended, failure to make required
22 disclosures, and attempting to collect an amount not expressly authorized by
23 agreement or law.

24 A reasonable interpretation of the request for Erica L. Brachfeld, APC's
25 training materials calls for Erica L. Brachfeld, APC to disclose information that does
26 not pertain to debt collection activities. In essence, Plaintiff wants to know every
27 single detail of Erica L. Brachfeld, APC's training materials and policies and
28 procedures regarding compliance with FDCPA and CA Rosenthal Act even if the

1 information does not pertain to any Plaintiff's claims in this case. Plaintiff is not
2 entitled to overly broad and unreasonable discovery on the chance that Plaintiff may
3 somehow relate it to an issue in this case. Further, Plaintiff must not be allowed to
4 conduct a "fishing expedition" into Erica L. Brachfeld, APC's policies and
5 procedures. Defendant should only be required to produce that which is relevant to
6 Plaintiff's specific claims in this particular case.

7 DOCUMENT REQUEST NO. 13:

8 All DOCUMENTS which constitute, reflect, or relate to any contract or agreement
9 between YOU and any creditor, pursuant to which YOU attempted to collect any
10 debt allegedly owed by Plaintiff.

11 RESPONSE TO REQUEST NO. 13:

12 Defendant objects to the request on the grounds it is vague and ambiguous,
13 including vague and ambiguous as to the term, "YOU," is overly broad, unduly
14 burdensome, and oppressive. Defendant further objects to the request on the
15 grounds it calls for information which is not relevant and not reasonably calculated
16 to lead to the discovery of admissible evidence regarding Plaintiff's claims and
17 Defendant's defenses.

18 PLAINTIFF'S ARGUMENT FOR FURTHER RESPONSE:

19 One of Plaintiff's claims is that the Defendant attempted to collect amounts
20 that were not authorized by law or any applicable agreement between Plaintiff and
21 her creditor. The contract between Defendant's debt collection agency and the
22 client may corroborate this.

23 More importantly, the manner in which Defendant is compensated under her
24 agreement with the account owner may demonstrate that Defendant had an incentive
25 to engage in aggressive or "enhanced" collection methods.

26 Further, depending on the nature of the relationship and the degree of control
27 imposed by Defendant and its client, the creditor, it may become clear that the
28 creditor itself should be added as a party under the RFDCPA (which allows claims

1 against creditors, unlike the FDCPA).

2 While there may not be any California or ninth circuit authority on point, the
3 court in *Dickard v. Okla. Mgmt. Servs. for Physicians, LLC*, 2007 U.S. Dist. LEXIS
4 62851 (D. Ark. 2007) involved a motion to compel on a similar issue. The court
5 asked, "Can Discovery include contracts between [defendant] and other third
6 Parties?" In holding affirmatively, the court noted the general principle that
7 "[r]elevance is construed broadly and determined in relation to the facts and
8 circumstances of each case," and concluded that if the defendant "did not seek to
9 collect the debt directly, but contracted out such a procedure, it seems relevant to the
10 court that such information MAY lead to discoverable information." (Id. at 10.)
11 While it is not Plaintiff's contention here that Defendant sub-contracted its collection
12 efforts, again, the nature of the relationship between Defendant and the creditor may
13 indicate that the creditor should be included in this action. Obviously it would
14 enhance judicial efficiency for Plaintiff to not have to bring multiple different
15 actions on the same pattern of wrongdoing.

16 DEFENDANT'S RESPONSE:

17 The Agreement/Contract between Erica L. Brachfeld, APC and its client is not
18 relevant to Plaintiff's claims against Defendant in this case and not reasonably
19 calculated to lead to the discovery of admissible evidence regarding any issue in this
20 case. Plaintiff's claim that Defendant used aggressive or enhanced collection
21 methods to collect Plaintiff's debt is vague, baseless and another attempt by Plaintiff
22 to engage in an impermissible fishing expedition. Further, Defendant will
23 supplement its discovery responses to show that Brachfeld had attempted to collect
24 interest at the rate of 10 percent per annum pursuant to Civil Code Section 3289.

25 DOCUMENT REQUEST NO. 15:

26 All DOCUMENTS identified by YOU in YOUR responses to the concurrently
27 served special interrogatories, set one.

28 ///

1 RESPONSE TO REQUEST NO. 15:

2 Defendant objects to the request on the grounds it is vague and ambiguous,
3 including vague and ambiguous as to the term, "YOU" or "YOUR." Defendant will
4 produce a copy of Erica L. Brachfeld, APC's collection notes relating to the subject
5 account and a sample of the collection letter sent to Plaintiff on July 29, 2008.

6 PLAINTIFF'S ARGUMENT FOR FURTHER RESPONSE:

7 It appears that the withholding of such documents piggy-backs off of the
8 separate objections to the special interrogatories. For the sake of brevity, those
9 arguments will not be repeated here.

10 DEFENDANT'S RESPONSE:

11 At issue are Erica L. Brachfeld APC's employee handbook, training materials
12 and policies and procedures regarding compliance with the FDCPA and CA
13 Rosenthal Act. The request is not limited in any way and is therefore overly broad as
14 to be unduly burdensome. The request is not limited to any time period to narrow
15 and focus on relevant materials. Further, the request is not limited to documents
16 pertaining to Plaintiff's claims in this particular case and therefore the request calls
17 for documents which are not relevant and not reasonably calculated to lead to the
18 discovery of admissible evidence in this case. Finally the request calls for
19 documents which Erica L. Brachfeld, APC maintains are confidential and proprietary
20 in nature.

21 **Defendant Agrees to Produce Confidential and Proprietary**

22 **Information Subject to a Protective Order**

23 While most courts recognize a presumption of public access to court records,
24 every court has inherent, supervisory power over its own records and files. Thus,
25 public access may be denied. Hagestad v. Tragesser (9th Cir. 1995) 49 F.3d 1430,
26 1433-43. A court will order documents sealed where good cause is shown that
27 outweighs the public's interest in the documents. Specifically, courts may issue
28 protective orders limiting disclosure of proprietary information or "other confidential

1 research, development or commercial information.” FRCP 26(c)(7). Court may
2 grant a protective order restricting the use of any discovery to the present lawsuit.
3 Such relief is particularly justified if “federal action had been brought chiefly for the
4 purpose of exploiting liberal discovery devices available in federal civil actions.
5 Dove v. Atlantic Capital Corp. (2nd Cir. 1992) 963 F.2d 15, 19.

6 Defendant has no objections to producing Erica L. Brachfeld, APC's employee
7 handbook, training materials and policies and procedures regarding compliance with
8 FDCPA and CA Rosenthal Act so long as the information is *relevant* to Plaintiff's
9 claims and Defendant's defenses in this particular case. However, Defendant has
10 agreed to produce these documents so long as protective order is in place because the
11 documents Plaintiff seeks contain confidential information relating to training and
12 development, technology or other proprietary information belonging to Erica L.
13 Brachfeld, APC. Erica L Brachfeld, APC considers its employee handbook, training
14 materials and policies and procedures regarding compliance with the FDCPA and
15 CA Rosenthal Act as confidential and proprietary in nature. The documents Plaintiff
16 seeks were developed by Erica L. Brachfeld, APC at a significant expense in time,
17 effort and money. Erica L. Brachfeld would be competitively disadvantaged if one
18 of its competitors could obtain the requested documents developed and refined by
19 Erica L. Brachfeld, APC. In this regard, Erica L Brachfeld, APC takes measures to
20 ensure the information is kept confidential by requiring each of its employees to sign
21 a confidentiality agreement. See Declaration of Martin Brachfeld.

22 Plaintiff and Defendant have met and conferred on this discovery issue.
23 Despite their good faith efforts, it became apparent that the Parties would not be able
24 to informally resolve their discovery dispute without this Court's intervention. As
25 such, Defendant advised Plaintiff that Defendants would proceed with a Motion for
26 Protective Order.

27 **Plaintiff's Request is Overly Broad and Calls for Irrelevant Documents**

28 Plaintiff's request is also overly broad in that it calls for documents which are

1 not relevant. Plaintiff demands that Defendant produce *all of* Erica L. Brachfeld,
2 APC's employee handbook, training materials and policies and procedures regarding
3 compliance with FDCPA and CA Rosenthal Act *regardless of whether the*
4 *information pertains to Plaintiff's claims in this particular case.* In this lawsuit,
5 Plaintiff alleges Defendant failed to provide verification notice, third party
6 disclosure, made repeated phone calls to Plaintiff's family, contact with Plaintiff
7 after Defendant was notified Plaintiff was represented by counsel, false
8 representations, unconscionable means to collect a debt, threatening legal action that
9 was not intended, failure to make required disclosures, and attempting to collect an
10 amount not expressly authorized by agreement or law.

11 A reasonable interpretation of the request for Erica L. Brachfeld, APC's
12 employee handbook and training materials calls for Erica L. Brachfeld, APC to
13 disclose information that does not pertain to debt collection activities. In essence,
14 Plaintiff wants to know every single detail of Erica L. Brachfeld, APC's employee
15 handbook, training materials and policies and procedures regarding compliance with
16 FDCPA and CA Rosenthal Act even if the information does not pertain to any
17 Plaintiff's claims in this case. Plaintiff is not entitled to overly broad and
18 unreasonable discovery on the chance that Plaintiff may somehow relate it to an
19 issue in this case. Further, Plaintiff must not be allowed to conduct a "fishing
20 expedition" into Erica L. Brachfeld, APC's policies and procedures. Defendant
21 should only be required to produce that which is relevant to Plaintiff's specific
22 claims in this particular case.

23 **III. SPECIAL INTERROGATORIES AND RESPONSES THERETO.**

24 SPECIAL INTERROGATORY NO. 2:

25 IDENTIFY by caption, court, case number, and result all litigation filed against
26 YOU alleging violations of the Fair Debt Collection Practices Act.

27 RESPONSE TO INTERROGATORY NO. 2:

28 Defendant objects to the interrogatory on the grounds it is vague and

1 ambiguous as to the term, "YOU." Subject to and without waiving said objections,
2 Defendant responds as follows: Defendant will produce a copy of Erica L. Brachfeld,
3 APC's collection notes relating to the subject account.

4 PLAINTIFF'S ARGUMENT FOR FURTHER RESPONSE:

5 Interrogatory number 2 overlaps with request for production 5, seeking "All
6 DOCUMENTS -- including but not limited to pleadings and discovery -- relating to
7 or prepared in connection with any lawsuits YOUR company has defended in which
8 YOUR company was alleged to have violated the FDCPA." The reasons for further
9 response set forth in connection with RFP 5 apply equally well here.

10 In addition, this information is publicly available. Although it is publicly
11 available, it would be extremely burdensome and time-consuming for Plaintiff to
12 comb through the records of the numerous different courts where Defendant may
13 have been sued. (For instance, not all courts subscribe to Pacer; no state courts do.)
14 On the other hand, Defendant or its counsel no doubt could procure such information
15 with ease.

16 DEFENDANT'S RESPONSE:

17 Plaintiff demands information of any lawsuits, claims or complaints against
18 Brachfeld, other than the case at hand. Plaintiff's discovery request is overly broad
19 and irrelevant to any of the factual allegations set forth in the Complaint. In essence,
20 Plaintiffs want to know about any action against or by Brachfeld regardless of
21 whether it was a meritorious claim.

22 The request is impermissible vague, ambiguous and overly broad. A
23 reasonable interpretation of the request calls for Brachfeld to disclose information
24 regarding any kind of claim against Brachfeld, not just the claims asserted by
25 Plaintiff in this particular case.

26 Further, other claims, lawsuits or complaints are not relevant. What other
27 claimants have alleged against Brachfeld in unrelated matters has no bearing on
28 Brachfeld's liability to Plaintiff. For instance, if another person claimed that

1 Brachfeld contacted him/her on a disputed debt that is irrelevant to the instant action.
2 Surely, none of these exemplars tend to prove or disprove the number of calls that
3 Brachfeld made in collection of Plaintiff's debt. It also would not lead to admissible
4 discovery in this case.

5 SPECIAL INTERROGATORY NO. 10:

6 Describe the maintenance of all procedures utilized by YOU to avoid violations of
7 the Fair Debt Collection Practices Act.

8 RESPONSE TO INTERROGATORY NO. 10:

9 Defendant objects to the interrogatory on the grounds it is vague and
10 ambiguous as to the term, "YOU." Defendant further objects to the interrogatory on
11 the grounds it calls for proprietary and confidential information and calls for
12 information which is not relevant and not reasonably calculated to lead to the
13 discovery of admissible evidence concerning Plaintiff's claims and Defendant's
14 defendants thereto.

15 Subject to and without waiving said objections, Defendant responds as
16 follows: Once an appropriate protective order is entered, Defendant will produce
17 relevant portions of Erica L. Brachfeld, APC's policies and procedures that concern
18 Plaintiff's claims.

19 PLAINTIFF'S ARGUMENT FOR FURTHER RESPONSE:

20 Interrogatory number 10 seeks information similar to requests for production
21 3, 4, 6 and 7 – dealing with Defendant's policies, procedures, training and manuals
22 relating to FDCPA / RFDCPA compliance. For the sake of brevity, the arguments
23 advanced previously will not be repeated here.

24 Beyond mere description of the contents of such documents, however,
25 interrogatory 10 also seeks an affirmative statement verifying that the policies set
26 forth in such publications are actually maintained.

27 DEFENDANT'S RESPONSE:

28 At issue are Erica L. Brachfeld APC's employee handbook, training materials

1 and policies and procedures regarding compliance with the FDCPA and CA
2 Rosenthal Act. The interrogatory is not limited in any way and is therefore overly
3 broad as to be unduly burdensome. The interrogatory is not limited to any time
4 period to narrow and focus on relevant materials. Further, the interrogatory is not
5 limited to information pertaining to Plaintiff's claims in this particular case and
6 therefore the request calls for information which is not relevant and not reasonably
7 calculated to lead to the discovery of admissible evidence in this case. Finally the
8 request calls for information which Erica L. Brachfeld, APC maintains are
9 confidential and proprietary in nature.

10 **Defendant Agrees to Produce Confidential and Proprietary**
11 **Information Subject to a Protective Order**

12 While most courts recognize a presumption of public access to court records,
13 every court has inherent, supervisory power over its own records and files. Thus,
14 public access may be denied. Hagestad v. Tragesser (9th Cir. 1995) 49 F.3d 1430,
15 1433-43. A court will order documents sealed where good cause is shown that
16 outweighs the public's interest in the documents. Specifically, courts may issue
17 protective orders limiting disclosure of proprietary information or "other confidential
18 research, development or commercial information." FRCP 26(c)(7). Court may
19 grant a protective order restricting the use of any discovery to the present lawsuit.
20 Such relief is particularly justified if "federal action had been brought chiefly for the
21 purpose of exploiting liberal discovery devices available in federal civil actions.
22 Dove v. Atlantic Capital Corp. (2nd Cir. 1992) 963 F.2d 15, 19.

23 Defendant has no objections to producing Erica L. Brachfeld, APC's employee
24 handbook, training materials and policies and procedures regarding compliance with
25 FDCPA and CA Rosenthal Act so long as the information is *relevant* to Plaintiff's
26 claims and Defendant's defenses in this particular case. However, Defendant has
27 agreed to produce these documents so long as protective order is in place because the
28 documents Plaintiff seeks contain confidential information relating to training and

1 development, technology or other proprietary information belonging to Erica L.
2 Brachfeld, APC. Erica L Brachfeld, APC considers its employee handbook, training
3 materials and policies and procedures regarding compliance with the FDCPA and
4 CA Rosenthal Act as confidential and proprietary in nature. The documents Plaintiff
5 seeks were developed by Erica L. Brachfeld, APC at a significant expense in time,
6 effort and money. Erica L. Brachfeld would be competitively disadvantaged if one
7 of its competitors could obtain the requested documents developed and refined by
8 Erica L. Brachfeld, APC. In this regard, Erica L Brachfeld, APC takes measures to
9 ensure the information is kept confidential by requiring each of its employees to sign
10 a confidentiality agreement. See Declaration of Martin Brachfeld.

11 Plaintiff and Defendant have met and conferred on this discovery issue.
12 Despite their good faith efforts, it became apparent that the Parties would not be able
13 to informally resolve their discovery dispute without this Court's intervention. As
14 such, Defendant advised Plaintiff that Defendants would proceed with a Motion for
15 Protective Order.

16 **Plaintiff's Interrogatory is Overly Broad and Calls for Irrelevant**
17 **Documents**

18 Plaintiff's interrogatory is also overly broad in that it calls for information
19 which is not relevant. Plaintiff's interrogatory seeks information that does not
20 *pertain to Plaintiff's claims in this particular case.* In this lawsuit, Plaintiff alleges
21 Defendant failed to provide verification notice, third party disclosure, made repeated
22 phone calls to Plaintiff's family, contact with Plaintiff after Defendant was notified
23 Plaintiff was represented by counsel, false representations, unconscionable means to
24 collect a debt, threatening legal action that was not intended, failure to make required
25 disclosures, and attempting to collect an amount not expressly authorized by
26 agreement or law.

27 A reasonable interpretation of the interrogatory calls for Erica L. Brachfeld,
28 APC to disclose information that does not pertain to debt collection activities. In

1 essence, Plaintiff wants to know every single detail of Erica L. Brachfeld, APC's
2 employee handbook, training materials and policies and procedures regarding
3 compliance with FDCPA and CA Rosenthal Act even if the information does not
4 pertain to any Plaintiff's claims in this case. Plaintiff is not entitled to overly broad
5 and unreasonable discovery on the chance that Plaintiff may somehow relate it to an
6 issue in this case. Further, Plaintiff must not be allowed to conduct a "fishing
7 expedition" into Erica L. Brachfeld, APC's policies and procedures. Defendant
8 should only be required to produce that which is relevant to Plaintiff's specific
9 claims in this particular case.

10 SPECIAL INTERROGATORY NO. 13:

11 If YOU provide training to new employees or independent contractors involved in
12 the collection of consumer accounts, please:

- 13 a) Describe the training content, timing and duration;
14 b) IDENTIFY all DOCUMENTS and audio or visual materials used in such
15 training; and
16 c) IDENTIFY each PERSON involved in such training.

17 RESPONSE TO INTERROGATORY NO. 13:

18 Defendant objects to the interrogatory on the grounds it is vague and
19 ambiguous as to the term, "YOU." Defendant further objects to the interrogatory on
20 the grounds it calls for proprietary and confidential information and calls for
21 information which is not relevant and not reasonably calculated to lead to the
22 discovery of admissible evidence concerning Plaintiff's claims and Defendant's
23 defendants thereto.

24 Subject to and without waiving said objections, Defendant responds as
25 follows: Once an appropriate protective order is entered, Defendant will produce
26 relevant portions of Erica L. Brachfeld's policies and procedures that concern
27 Plaintiff's claims.

28 ///

1 PLAINTIFF'S ARGUMENT FOR FURTHER RESPONSE:

2 Interrogatory 13 addresses specifically the training procedures for new
3 employees or contractors, and seeks an identification of the people who are involved
4 in the training, as well as the duration of the training.

5 The justification for this interrogatory is essentially the same as for
6 interrogatory number 10, and requests for production 3, 4, 6, and 7.

7 DEFENDANT'S RESPONSE:

8 At issue are Erica L. Brachfeld APC's employee handbook, training materials
9 and policies and procedures regarding compliance with the FDCA and CA
10 Rosenthal Act. The interrogatory is not limited in any way and is therefore overly
11 broad as to be unduly burdensome. The interrogatory is not limited to any time
12 period to narrow and focus on relevant materials. Further, the request is not limited
13 to information pertaining to Plaintiff's claims in this particular case and therefore the
14 interrogatory calls for information which is not relevant and not reasonably
15 calculated to lead to the discovery of admissible evidence in this case. Finally the
16 request calls for information which Erica L. Brachfeld, APC maintains are
17 confidential and proprietary in nature.

18 **Defendant Agrees to Produce Confidential and Proprietary**
19 **Information Subject to a Protective Order**

20 While most courts recognize a presumption of public access to court records,
21 every court has inherent, supervisory power over its own records and files. Thus,
22 public access may be denied. Hagestad v. Tragesser (9th Cir. 1995) 49 F.3d 1430,
23 1433-43. A court will order documents sealed where good cause is shown that
24 outweighs the public's interest in the documents. Specifically, courts may issue
25 protective orders limiting disclosure of proprietary information or "other confidential
26 research, development or commercial information." FRCP 26(c)(7). Court may
27 grant a protective order restricting the use of any discovery to the present lawsuit.
28 Such relief is particularly justified if "federal action had been brought chiefly for the

1 purpose of exploiting liberal discovery devices available in federal civil actions.

2 Dove v. Atlantic Capital Corp. (2nd Cir. 1992) 963 F.2d 15, 19.

3 Defendant has no objections to producing Erica L. Brachfeld, APC's employee
4 handbook, training materials and policies and procedures regarding compliance with
5 FDCPA and CA Rosenthal Act so long as the information is *relevant* to Plaintiff's
6 claims and Defendant's defenses in this particular case. However, Defendant has
7 agreed to produce these documents so long as protective order is in place because the
8 documents Plaintiff seeks contain confidential information relating to training and
9 development, technology or other proprietary information belonging to Erica L.
10 Brachfeld, APC. Erica L Brachfeld, APC considers its employee handbook, training
11 materials and policies and procedures regarding compliance with the FDCPA and
12 CA Rosenthal Act as confidential and proprietary in nature. The documents Plaintiff
13 seeks were developed by Erica L. Brachfeld, APC at a significant expense in time,
14 effort and money. Erica L. Brachfeld would be competitively disadvantaged if one
15 of its competitors could obtain the requested documents developed and refined by
16 Erica L. Brachfeld, APC. In this regard, Erica L Brachfeld, APC takes measures to
17 ensure the information is kept confidential by requiring each of its employees to sign
18 a confidentiality agreement. See Declaration of Martin Brachfeld.

19 Plaintiff and Defendant have met and conferred on this discovery issue.
20 Despite their good faith efforts, it became apparent that the Parties would not be able
21 to informally resolve their discovery dispute without this Court's intervention. As
22 such, Defendant advised Plaintiff that Defendants would proceed with a Motion for
23 Protective Order.

24 **Plaintiff's Interrogatory is Overly Broad and Calls for Irrelevant**
25 **Documents**

26 Plaintiff's interrogatory is also overly broad in that it calls for training
27 procedures which are not relevant. Plaintiff demands that Defendant describe *all of*
28 Erica L. Brachfeld, APC's training procedures *regardless of whether the*

information pertains to Plaintiff's claims in this particular case. In this lawsuit, Plaintiff alleges Defendant failed to provide verification notice, third party disclosure, made repeated phone calls to Plaintiff's family, contact with Plaintiff after Defendant was notified Plaintiff was represented by counsel, false representations, unconscionable means to collect a debt, threatening legal action that was not intended, failure to make required disclosures, and attempting to collect an amount not expressly authorized by agreement or law.

A reasonable interpretation of the interrogatory calls for Erica L. Brachfeld, APC to disclose information that does not pertain to debt collection activities. In essence, Plaintiff wants to know every single detail of Erica L. Brachfeld, APC's training policies and procedures even if the information does not pertain to any Plaintiff's claims in this case. Plaintiff is not entitled to overly broad and unreasonable discovery on the chance that Plaintiff may somehow relate it to an issue in this case. Further, Plaintiff must not be allowed to conduct a "fishing expedition" into Erica L. Brachfeld, APC's policies and procedures. Defendant should only be required to provide information that which is relevant to Plaintiff's specific claims in this particular case.

DATED: June 1, 2009

Respectfully submitted,

By: /S/ Aidan W. Butler
Aidan W. Butler
Attorney for Plaintiff
CATHERINE BUI

DATED: June 1, 2009

CARLSON & MESSER, LLP

By: /S/ Larissa Nefulda
David J. Kaminski
Larissa Nefulda
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